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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,531	01/29/2004	Wayne E. Vick	45626/284122	5370
23370	7590	07/27/2006	EXAMINER	
JOHN S. PRATT, ESQ KILPATRICK STOCKTON, LLP 1100 PEACHTREE STREET ATLANTA, GA 30309			BRITTAIN, JAMES R	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/767,531	<b>Applicant(s)</b> VICK, WAYNE E.	
	<b>Examiner</b> James R. Brittain	<b>Art Unit</b> 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 20-22 and 24-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-22 and 24-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 15, 2006 has been entered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 24 and 28 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 24 is incomplete since it depends from canceled claim 23. With respect to claim 28, this claim is unclear because it is not known whether the scope of the claim is the patch being continuous with the first layer as the disclosure indicates that it would be so manufactured "during the process of manufacturing the first layer" so that it would appear that applicant has chosen a claim construction where "separate" in claim 20 only refers to a labeling and not that there is any clear separateness and further it is unclear if the scope includes when the patch is formed during the process of manufacturing the first layer.

### ***Claim Rejections - 35 USC § 103***

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20-22, 24-26, 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bullock (US 6089802) in view of Epstein (US 6478229).

Bullock (figures 3-6) teaches a strap for restraining freight with a first layer having adhesive 30 coating the layer and on a side of the strap considered to be the outer surface and is inherently securable to a surface of a transportation device. The end of the strap is considered to be the separate patch that is a continuous portion of the first layer and formed during the process of manufacturing the first layer. Applicant provides no discriminant in the claim to distinguish the separate patch and so the choice the end of the strap that is continuous with the first layer being the separate patch as indicated in this rejection fully meets this portion of applicant's claim construction. The difference is that the creep and elongation characteristics are unstated. However, Epstein (figure 1) teaches the desirability of controlling the mechanical properties of the strap. Therefore, the specific elongation and creep characteristics are a matter of adjusting the mechanical properties of the strap of Bullock to a particular desirable level and provide no unobvious result in view of Epstein teaching that adjusting the mechanical properties is well known. As to claim 21, the difference is that the layer is not stated as being a nonwoven fabric. It would have been obvious to utilize a nonwoven fabric as a layer in the strap of Bullock in view of Epstein (figure 1) teaching that it is desirable to utilize a non-woven fabric 8 in the construction of a multi-layered bundling strap so as to provide it with greater strength. In regard

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to claim 28, the end of the strap of Bullock is considered to be the separate patch that is a continuous portion of the first layer and formed during the process of manufacturing the first layer as indicated by applicant in claim 28. As to claim 29, Epstein teaches the use of a non-woven layer that is for reinforcement.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bullock (US 6089802) in view of Epstein (US 6478229) as applied to claim 20 above, and further in view of Blatt (US 4264251).

Further modification of the device of Bullock such that the patch is attached to the strap with adhesive would have been obvious in view of Blatt (figure 3) teaches a strap for restraining freight with a first layer of adhesive tape secured by adhesive to a second layer of adhesive tape at their ends. The two layers are clearly joined. Since the joining of the two layers is by adhesive, claim 27 is rendered obvious over the further teachings of Blatt. The second layer is considered a separate patch. Applicant provides no discriminant in the claim to distinguish the separate patch so the choice of a second layer as indicated in this rejection fully meets this portion of applicant's claim construction.

### ***Response to Arguments***

Applicant's arguments filed November 22, 2005 have been fully considered but they are not persuasive. Applicant argues that the "patch" identified above in the references of Blatt and Bullock is not "separate" from the strap. However, applicant has clearly chosen a claim construction that includes the patch being a continuous portion of the first layer and formed during the process of manufacturing the first layer. The addition of the term "separate" does not change the patch being formed continuous with the first layer. Applicant provides no

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discriminant in the claims to distinguish over the application of the art as applied. Applicant utilizes the open-ended term “comprising” at three locations in claim 20, thereby clearly indicating that other structure can be included in the scope of the claim and the application of the art is fully within the scope of the breadth of the claims. In response to applicant's argument that the references fail to show certain features of applicant's invention, the creep and yield characteristics, the references as a whole suggest adjusting the mechanical properties of the strap as being desirable and there is no unobvious result in applicant's particular range of creep and elongation. Further, it is noted that the additional features upon which applicant relies (i.e., there is a separate joining medium between two distinct structures, one being the strap and the other being the patch) is only recited in claim 27 and this claim is rejected over Blatt as indicated above, wherein there is basically two pieces of tape secured end to end by a lap joint. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

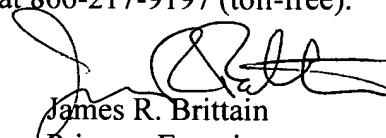
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is (571) 272-7065. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James R. Brittain  
Primary Examiner  
Art Unit 3677

JRB